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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/542,205	04/04/2000	Roy P DeMott	2172	5646

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER
1771	11

DATE MAILED: 06/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-11

Office Action Summary	Application No.	Applicant(s)	
	09/542,205	DEMOTT ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 3 and 4 stand rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over EP 784 114 issued to Huth et al. for the reasons of record.

Claim Rejections - 35 USC § 103

3. Claims 1, 2, and 5 stand rejected under 35 USC 103(a) as being obvious over EP 784 114 issued to Huth et al. for the reasons of record.

Response to Arguments

4. Applicant has not amended the claims in an attempt to overcome the prior art rejections. Instead, applicant traverses said rejections by asserting that the examiner has not established a prima facie case of anticipation and/or obviousness (Response, paragraph spanning pages 1-2 and 3rd paragraph, page 3).

5. With respect to the 102/103 rejection of claims 3 and 4, applicant asserts, "There is no description in Huth of a product having the characteristics of the present invention." (Response, page 2, lines 6-7). Specifically, "There is no teaching in Huth of the type of pile to treat (e.g., loop or free end), the type or size of abrasive matter, the material the pile is formed of, amount or

speed of the abrasion, etc." (Response, page 2, lines 6-8 of 1st paragraph). Due to this lack of specificity in Huth, applicant asserts that the prior art equipment could be employed to produce a product which is not "identical or only slightly different from the claimed invention." (Response, page 2, 1st paragraph).

6. In response, it is first noted that applicant's arguments are not commensurate in scope with the claims. Huth might lack a specific teaching to specific abrasive matter, pile material, amount or speed of abrasion, etc., but applicant's claims do not limit these features. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

7. Secondly, since these features are not explicitly disclosed by Huth, it is reasonable to presume that said features are not critical to the invention. In other words, the invention is applicable to various pile materials, at various abrasion speeds or amounts, and different abrasive particle sizes. Similarly, since applicant does not explicitly claim these features, one must presume that said features are not critical to the present invention. If this presumption is not accurate, then the present claims would be incomplete in describing the invention under 112, 1st and/or 2nd. In other words, if the particular pile material is critical to producing the present invention, then claims 3 and 4 are broader in scope than the disclosed invention and/or missing a critical element of the invention.

8. Thirdly, with respect to the pile being a loop or free end pile, since Huth lacks an explicit teaching to either pile type, it is reasonable to presume that the Huth invention is applicable to both types, especially given that a generic teaching of "pile" inherently encompasses the two known forms of pile—loop or free end pile.

9. Fourthly, the examiner asserts the burden has been properly shifted to applicant in that a prima facie case of 102/103 has been presented under *In re Fitzgerald* and *In re Best*. Specifically, Huth teaches a method of abrasively beating and wiping a pile fabric to produce a roughened pile surface. Hence, when applied to a pile fabric having free ends, it is reasonable to presume that Huth's apparatus would inherently produce a pile fabric having the claimed disturbances and fibrils. Thus, it is the examiner's position a 102/103 rejection is proper in that the claimed product appears to be the same or similar to that of the prior art. Applicant has not yet met the burden of showing otherwise. Therefore, applicant's arguments are found unpersuasive and the above rejection of claims 3 and 4 based upon the cited Huth reference are maintained.

10. With respect to the rejections of claims 1, 2, and 5, applicant reiterates the improper shift of burden under *In re Fitzgerald* and *In re Best* (Response, page 3, section 2, paragraphs 1 and 2). In response, it is noted that with respect to claims 1 and 2, the *Fitzgerald/Best* argument is unpersuasive in that the rejection of claims 1 and 2 is not based upon this argument. In other words, the rejection of claims 1 and 2 is a 103 obviousness rejection, not a 102/103 rejection according to *Fitzgerald/Best*. Thus, applicant's argument is irrelevant to the rejection of claims 1 and 2. With respect to the rejection of claim 5, which is dependent upon claim 4, applicant's arguments regarding the rejection of claim 4 have been found unpersuasive as described above. Hence, the argument with respect to claim 5 is also found unpersuasive.

11. With respect to the 103 rejection of claims 1, 2, and 5, applicant asserts improper hindsight by the examiner (Response, paragraph spanning pages 3-4). In response, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based

upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). With respect to claims 1 and 2, the 103 rejection is based upon the premise that it would have been obvious to one skilled in the art to abrade a pile surface to the amounts presently claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. With respect to claim 5, the 103 rejection is based upon the premise that it would have been obvious to one skilled in the art to apply a lubricant to the pile fibers since the use of lubricants are well known in the art of textiles. Hence, both rejections are not based upon improper hindsight reasoning, since neither is based upon knowledge gleaned only from the present disclosure. Therefore, applicant's arguments are found unpersuasive.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
June 2, 2003